



State of Utah

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor
NEAL T. GOOCH
Insurance Commissioner

Insurance Department

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: January 10, 2011 **Time:** 9am **Place:** East Bldg, Spruces Room

MEMBERS

Commission Members

Chair Cortlund G. Ashton, Salt Lake Cnty
Co-Chair Garry M. Goodsell, Iron Cnty
Dirk Keyes

Canyon W. Anderson, Davis Cnty
Jerry M. Houghton, Tooele Cnty

Department Staff

Perri Babalis, AG Counsel
Tammy Greening, Examiner
Adam Martin, Examiner

Suzette Green-Wright, MC Dir.
Jilene Whitby, PIO Recorder

Mark Kleinfeld, ALJ
Brad Tibbitts, P&C Dir.

AGENDA

General Session: (Open to the Public)

- **Welcome and Introductions** / Cortlund Ashton, Chair
- **Executive Session** - If needed (*Closed to the Public*)
- **Adopt Minutes of Previous Meetings**
- **Reports**
 - Concur with Licensee Report
 - Number of Cases Open & Closed
 - Investigation Process / Tammy
 - Enforcement Cases
 - Request for Attorney Exemption: None
- **Administrative Proceedings Action**
 - Request for Hearing: None
 - Stipulation & Order:
 - Guardian Title Ins. Agency of Southern Utah
- **Old Business**
 - Justification of Rates / Tracy
 - Update on LSI / Suzette
 - Justification of National Title Rates / Tracy
 - Discuss Proposed Rule, "Submission of a Schedule of Minimum Charges for Escrow Services" (Combination of R592-3 & 4) / Tracy
 - Review Working Draft of Rule R592-6, Including Prepayment of Subordination & Other Fees by Title Agents / Perri & Canyon
 - Answers to Questions on Three Year Experience Requirement 31A-23a-204(1)(a) / Brad
 - Review notary authority & 2 letters issued about notaries by department / Brad
 - Confusion with dates on initial, inactive, activated licenses on website / Tammy
 - Update on Proposed Changes to Rule R590-99 / Suzette
 - Prepayment of Subordination & Other Fees by Title Agents / Canyon
- **New Business**
 - Notary Rate Justification and Authority
 - What is an Adequate Search? / Jerry
 - Definition of Escrow
- **Other Business from Committee Members**
- **Adjourn:**
- **Next Meeting:** February 14, 2011, Copper Room

2011 Meetings

Jan. 10	Feb. 14	Mar. 14	Apr. 11	May 9	Jun. 13
Jul. 11	Aug. 8	Sep. 12	Oct. 11	Nov. 14	Dec. 12

Title Insurance Consumer Complaints

Open and Closed Consumer Complaint Summary Report

Case #	Date Open	Date closed	Complaint	CSA	
58109	1/25/2010	2/25/2010	HO premium not paid at closing	Meldee	JUSTIFIED
58202	2/22/2010	2/22/2010	title complaint, feels title company didn't uncover/disclose hazards for clear title and sale of home - flood insurance requirements	Sandy	UNJUSTIFIED
58434	5/19/2010	8/19/2010	Condo Ins not pd at closing	Meldee	UNJUSTIFIED
58624	8/10/2010	8/10/2010	Mechanicsliens recorded on property after closing	Sandy	Withdrawn
58832	11/8/2010	11/16/2010	Title agency did not the seller's delinquent dues paid	Meldee	UNJUSTIFIED
58852	11/15/2010		Lender complaint. Trust deed not recorded	Meldee	
58865	11/18/2010	12/9/2010	not supplying title ins or deed to the property	Sandy	UNJUSTIFIED

Tide Insurance Investigations

Case #	Date Opened	Date Closed	Elapsed Time	Reason Closed	Alleged Violation																Subtotal Function Code																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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**Title Insurance Investigations
Closed Investigation Summary Report**

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Title Insurance Investigations

Open and Closed Per Month Report

	Opened	Closed
January	7	4
February	20	26
March	11	41
April	19	25
May	20	7
June	20	39
July	26	17
August	24	21
September	15	55
October	14	15
November	25	17
December	11	55
Totals for 2008	212	322
January	8	31
February	13	15
March	4	12
April	10	5
May	5	5
June	16	25
July	6	7
August	15	17
September	31	22
October	20	18
November	7	11
December	10	9
Totals for 2009	145	177
January	10	9
February	7	22
March	17	17
April	2	0
May	3	15
June	23	22
July	0	2
August	0	6
September	3	0
October	5	2
November	20	5
December	16	26
Totals for 2010	106	126

**Title Insurance Consumer Complaints
Open and Closed Per Month Report**

	Open	Closed
January	1	0
February	1	1
March	3	2
April	5	2
May	0	5
June	1	1
July	0	1
August	2	1
September	1	0
October	0	3
November	1	0
December	0	1
Total 2008	15	17
January	0	0
February	0	1
March	0	0
April	0	0
May	1	0
June	0	1
July	0	0
August	1	0
September	0	0
October	0	1
November	0	0
December	1	2
Total for 2009	3	5
January	1	0
February	1	2
March	0	0
April	0	0
May	1	0
June	0	0
July	0	0
August	1	2
September	0	0
October	0	0
November	3	1
December	0	1
Total for 2010	7	6

Title Insurance Enforcement Report

E-Case #	Date Opened	Recommended Action	Action taken	Action Date	Closed Date
2174	5/20/08	Hearing	Prosecutor for drafting	9/8/08	
			Respondent for signature	6/23/10	
			Hearing rescheduled for February		
2331	12/22/08	Default Revocation	Prosecutor for drafting		
			Respondent for signature		
			Revocation		
2405	4/15/09	Appeal Reversed	Under Review	5/31/10	
			Awaiting Fine	12/14/10	
			Fine \$1000, 6 mos prob.		
2423	5/14/09	Complaint	Prosecutor for drafting	6/9/10	
			Hearing		
			Dismissed	9/23/10	
2521	9/23/09	Informal Action	Sent to Respondent	9/30/09	
			Order to show cause	3/2/10	
			Additional Fine	3/31/10	
2548	10/26/09	Dismissed	Prosecutor for drafting	4/8/10	
			Respondent for signature		
			Dismissed	9/29/10	
2549	10/26/09	Dismissed	Prosecutor for drafting	4/8/10	
			Respondent for signature		
			Dismissed		
2564	11/5/09	Stipulation and Order	Prosecutor for drafting	5/17/10	
			S&O offer	9/23/10	
			Fine paid	11/22/10	
2566	11/9/09	Stipulation and Order	S&O Mailed to new address	11/23/10	1/4/2011
2572	11/17/09	Hearing	Sent to Respondent	2/4/10	
			Hearing set	8/2/10	
			Fine Paid	11/9/10	
2598	12/22/09	Stipulation and Order	Prosecutor for drafting	12/22/09	
			Respondent for signature		
			Waiting on Guardian Title result		
2621	1/12/10	Dismissed	Sent to Respondent	2/4/10	
			Pre-hearing set	8/10/10	
			Dismissed	9/14/10	
2623	1/12/10	Complaint	Sent to Respondent	2/4/10	
			Withdrawn	7/1/10	

Title Insurance Enforcement Report

E-Case #	Date Opened	Recommended Action	Action taken	Action Date	Closed Date
2624	1/12/10	Complaint	Sent to Respondent	2/4/10	
			Default Order	9/20/10	
			Collection ltr sent	12/29/10	
			Prosecutor for drafting	3/4/10	

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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENT:

GUARDIAN TITLE INSURANCE
AGENCY OF SOUTHERN UTAH
Attn.: Douglas W. Curtis
1086 South Main Plaza, Suite 101
St. George, UT 84770
License No. 7058

ORDER ON REMAND
(Formal Hearing)

DOCKET No. 2009-124-PC
(E-Case No. 2405)

Mark E. Kleinfield,
Presiding Officer

STATEMENT OF THE CASE BASED ON REMAND
FROM THE COMMISSIONER

THIS MATTER, concerning *settlement-escrow* issues, having been remanded back to the Presiding Officer after issuance of an *Order on Petition for Agency Review of Order* under date of December 14, 2010 came on to be heard as to imposition of penalty and forfeiture before Mark E. Kleinfield, *Administrative Law Judge*, serving as designated *Presiding Officer*, based on the record in the file without the necessity of further hearing or argument of the parties.

ISSUE ON REMAND

The basic issue in this case at this juncture is: The Respondent Guardian Title Insurance Agency of Southern Utah by handling the buyer's side of a sale in a "split" closing on September 30, 2008 and not issuing a title policy as part of the transaction and thus having violated Section 31A-23a-406(1)(c), Utah Code Ann., 1953, as amended, what is the appropriate penalty?

The Presiding Officer being fully advised in the premises and taking administrative notice of the files and records of the Department, now enters his *Findings of Fact, Conclusions of Law, and Order*, on behalf of the Department:

FINDINGS OF FACT

I, find by a preponderance of the evidence, the following facts:

Preliminary-Procedural Facts (Paragraphs 1-3)

1. The Utah Insurance Department ("*Department*") is a governmental entity of the State of Utah. The Department as per Utah Code Ann. Section 31A-2-101 is empowered to administer the *Insurance Code*, Title 31A, Utah Code Ann., 1953, as amended.
2. The Respondent, Guardian Title Insurance Agency of Southern Utah ("*Guardian*"), is:
 - a. a Utah business entity, domiciled in and maintaining a present principal business address of 1086 South Main Plaza, Suite 101, St. George, Utah 84770; and
 - b. a licensed title insurance agency in the State of Utah having obtained and maintained License No. 7058 since on or about May 16, 2002.

3. As per *Order on Petition for Agency Review of Order* under date of December 14, 2010 has been found to have violated Section 31A-23a-406(1)(c), Utah Code Ann., 1953, as amended,

DISCUSSION-ANALYSIS

(Paragraphs 1 -7)

The record now being complete sets forth competent and credible evidence for the entry of the following analysis:

1. The question(s) presented is:

“The Respondent having violated Utah Code Ann. Section 31A-23a-406(1)(c) what is the appropriate penalty or penalties to be imposed?”

2. Pertinent Statute(s): SEE Utah Code Ann. Section 31A-2-308, subsections (1)(a),(b)(ii) and (11)(a), respectively.

3. a. The original Complaint by the Department in its generic prayer for relief referenced the penalty statute of Section 31A-2-308 and the up to possible \$5,000.00 forfeiture as well as a six months probation “and such other relief as the Presiding Officer might deem just”.

b. At the original hearing on March 28, 2010 the Department referenced a similar “split” closing circumstance that was resolved by a stipulated \$500.00 forfeiture.

c. The Respondent in large measure did not speak to possible penalties based on its stance that no violation occurred.

4. The Commissioner’s *Order on Petition for Agency Review of Order* under date of December 14, 2010 references the chronology of the instant case and on page 25 therein states:

a. “The Presiding Officer found that Guardian did not violate Subsection 406(1)(c) and therefore imposed no penalty. Likewise, had Cooper not been decided, the Review Officer would have upheld the Presiding Officer’s original order. That history argues in favor of leniency in the imposition of a penalty”.

b. “On the other hand, the Department made its views on the interpretation of Subsection 406(1)(c) known over a year before the sale of the real property by the Baxters to Luckau”. (SEE specifically: Bulletin 2007-5 referencing that this bulletin superseded all prior communications with the industry on split escrows.)

5. Additionally the Commissioner in his December 14, 2010 Order states: “Given these seemingly contradictory factors, the Review Officer remands the matter back to the Presiding Officer, directing him to impose the same penalty that would have been imposed had the Presiding Officer ruled that Guardian violated Subsection 406(1)(c)”. (EMPHASIS ADDED.)

6. What the Commissioner (Review Officer) directs is in so many words a “Back to the Future (Past?)” scenario in that the Presiding Officer is directed to take back to March 28, 2010 the December 14, 2010 decision and apply it to the then instant proven (stipulated) facts as to imposition of a penalty(ies).

7. Based on the Commissioner’s direction if as Presiding Officer I had ruled a violation was present I must frankly state such does not seem to be so “heinous” as to impose a \$5,000.00 forfeiture and or six months probation. This being especially true in light of the referenced stipulated \$500.00 forfeiture in a another “split” escrow violation advanced by the Department at the original March 28, 2010 hearing. Additionally there was no evidence of the buyer and or seller in the September 30, 2008 transaction(s) at issue being

aggrieved or harmed. While the “*no harm, no foul*” approach prevalent in sports world does not hold sway such arguably is a factor. Lastly there is no evidence in the record that the present Respondent is a “bad” actor or producer with if any let alone a litany of similar or other violations of the Utah Insurance Code. What if anything is present is or was a “good faith” presentation of absent the after the fact Cooper decision a sustainable and viable legal position.

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and discussion-analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Utah Insurance Commissioner as per Utah Code Ann. Section 31A-2-308 upon a finding of a violation of “any insurance statute”[herein Utah Code Ann. Section 31A-23a-406(1)(c) as alleged in the Complainant’s September 22, 2009 Complaint]:

a. “**shall**” in accordance with subsection (1)(a) of Section 31A-2-308 order the forfeiting “to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed”;

b. “**may**” in accordance with subsection (1)(b)(ii) of Section 31A-2-308 “order any other person [other than an individual] who violated an insurance statute or rule to forfeit to the state not more than \$5,000.00 for each violation”; and

c. “**may**” in accordance with subsection (11)(a) of Section 31A-2-308 “in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee’s license or certificate of authority (i) when a licensee of the department, other than a

domestic insurer: (A) persistently or substantially violates the insurance law;”.

(EMPHASIS ADDED).

2. The Respondent Guardian Title Insurance Agency of Southern Utah violated Utah Code Ann. Section 31A-23a-406(1)(c) as alleged in the Complainant’s September 22, 2009 Complaint.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW
the Presiding Officer herewith makes the following recommended Order:

RECOMMENDED ORDER

**IT IS RECOMMENDED THAT THE TITLE AND ESCROW COMMISSION
IMPOSE THE FOLLOWING PENALTY:**

The Respondent Guardian Title Insurance Agency of Southern Utah having violated Utah Code Ann. Section 31A-23a-406(1)(c) as alleged in the Complainant-Department’s September 22, 2009 Complaint is ordered in accordance with Utah Code Ann. Section 31A-2-308(1)(a),(b)(ii) and (11)(a), respectively, to:

1. Forfeit twice the amount of its profit resultant from Guardian Title Insurance Agency of Southern Utah’s services rendered in relation to the settlement statement dated September 30, 2008 in escrow file no 08-1552W to be paid to the Commission within 30 days of the issuance of the Order;

2. Be assessed an administrative forfeiture in the amount of \$1,000.00 to be paid to the Commission within 30 days of the issuance of the Order; and

3. Be placed on probation for a period of 60 days with the terms of probation being that the Respondent shall have no further violations of the Utah Insurance Code, Department Rules, or any order of the Commission and or Commissioner, commencing on issuance of the Order.

DATED this 22 day of December, 2010.

**NEAL T. GOOCH,
INSURANCE COMMISSIONER**

A handwritten signature in cursive script, reading "Mark E. Kleinfeld".

MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER
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1 **R592-XX Insurance, Title and Escrow Commission.**

2 **R592-XX. Submission of a Schedule of Minimum Charges for Escrow**
3 **Services.**

4 **R592-XX-1. Authority.**

5 This rule is promulgated by the Title and Escrow Commission pursuant
6 to Section 31A-2-404 which requires the Commission to make rules
7 related to title insurance.

8
9 **R592-XX-2. Purpose and Scope.**

10 (1) The purpose of this rule is to establish the procedures
11 for filing a Schedule of Minimum Charges for Escrow Services pursuant
12 to Section 31A-19a-209.

13 (2) This rule applies to all title insurers, agencies and
14 producers providing escrow services in Utah.

15
16 **R592-XX-3. Documents Incorporated by Reference.**

17 (1) The department requires that the documents described in
18 this rule shall be used for all filings.

19 (2) The following filing documents are hereby incorporated by
20 reference and are available on the department's web site,
21 <http://www.insurance.utah.gov>.

22 (a) "Transmittal Document for Title Agency or Title Producer";
23 and

24 (b) "Schedule of Minimum Charges for Escrow Services."
25

26 **R592-XX-4. Definitions.**

27 In addition to the definitions of Sections 31A-1-301,
28 31A-2-402, and 31A-19a-102, the following definitions shall apply for
29 the purpose of this rule.

30 (1) "Additional escrow services" means escrow settlement
31 services that are rendered in excess of the escrow settlement services
32 not specifically shown in the minimum escrow charges listed in the
33 Schedule of Minimum Charges for Escrow Services.

34 (2) "Certification" means a statement that the filing being
35 submitted is in compliance with Utah laws and rules.

36 (3) "Charge" means a dollar amount charged for a service
37 rendered by a title insurer, title agency, or title producer.

38 (4) "Document preparation" means the preparation or
39 compilation of documents in connection with escrow services.

40 (5) "Electronic filing" means:

41 (a) a filing submitted via the internet by a title insurer using
42 the System for Electronic Rate and Forms Filings (SERFF); or

43 (b) a filing submitted via an email system by a title insurance
44 agency or an individual title insurance producer not designated to
45 a title insurance agency.

46 (6) "Escrow charge" means a dollar amount charged for an escrow
47 service shown in the Schedule of Minimum Charges for Escrow services.

48 (7) "Escrow services" means those services related to
49 settlements of real estate transactions.

50 (8) "File and use" means a filing can be used, sold, or offered
51 for sale after it has been filed with the department.

52 (9) "File before use" means a filing can be used, sold, or offered
53 for sale after it has been filed with the department, and a stated

period of time has elapsed from the date filed.

(10) "Filer" means a person or entity who submits a filing.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The Filing Objection Letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(12) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted and which designates filing authority to the filer.

(13) "Long-term escrow" means a "For Benefit Of" (FBO) account that is for the purpose of payment collection and administration of seller-financed transactions, as described by an escrow agreement.

(14) "Mini escrow" means an escrow settlement service conducted by a title agency to clear a title, obtain payoffs and record necessary closing documents for a lender that performs his or her own closing service.

(15) "Minimum escrow fee" means the minimum amount that must be charged for escrow settlement services that are rendered.

(16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(17) "Other settlement services" means additional services not specifically listed in the Schedule of Minimum Charges for Escrow Services.

(18) "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department, with the reasons for rejection; and

(c) not considered filed with the department.

R592-XX-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensees are responsible for assuring compliance with Utah laws and rules. Filings not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected as incomplete and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will be charged a new filing fee.

(4) Prior filings will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit

Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in rating practices to affected consumers.

(6)(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than 15 days after the date of the original filing was submitted to the department. The filer must reference the original filing.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R592-XX-9

(8) A filer must notify the department when withdrawing a previously filed rate.

R592-XX-6. Filing Requirements.

(1) Only an individual who is authorized to act on behalf of the insurer, agency or producer can submit a filing.

(2)(a) An initial Schedule of Minimum Charges for Escrow Services filing is a file and use filing and is effective the day the initial schedule is filed.

(b) A revised Schedule of Minimum Charges for Escrow Services filing is a file before use filing and is effective:

(i) thirty (30) calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed; or

(ii) a date specified by the filer that is later than 30 calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed.

(3) All filings must be submitted as an electronic filing via:

(a) email; or

(b) SERFF.

(4) Email Filing: A complete email filing consists of the following:

(a) An email with a title showing the name of the filer and stating that it is an escrow rate filing;

(b) Utah Transmittal Document for Title Agency or Title Producer, completed and containing the following items in the following order:

(i) Completed Filing Description, contained in Section 9 of the transmittal document, with the following information presented in the order shown.

(A) Certification.

(I) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(II) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R592-XX AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(III) A filing will be rejected if the certification is false, missing, or incomplete.

(IV) a certification that is false may subject the licensee to administrative action.

(B) Indicate if the filing is:

160 (I) new;

161 (II) replacing or modifying a previous submission, with changes

162 described;

163 (III) previously rejected, with reasons for rejection and

164 previous filing's submission date; or

165 (IV) previously objected to or prohibited, with reasons for

166 resubmission.

167 (c) Schedule of Minimum Charges for Escrow Services, completed

168 as follows:

169 (i) All blank fields must be completed;

170 (ii) If a listed service is not performed by a licensee, the

171 field must show "N/A" or "Not Applicable"; and

172 (iii) The Schedule of Minimum Charges for Escrow Services shall

173 not be altered.

174 (d) Letter of Authorization.

175 (i) When the filer is not the licensee, a Letter of Authorization

176 from the licensee must be attached.

177 (ii) The licensee remains responsible for making sure that the

178 filing is in compliance with Utah laws and rules.

179 (e) As required by Section 31A-19a-203(1)(e)(i), the rate

180 filing fee must be received by the department within 5 days of the

181 electronic submission or the filing will be rejected.

182 (5) SERFF Filing. A complete SERFF filing consists of the

183 following:

184 (a) The completed description section on the general information

185 tab, presented in the order shown below.

186 (i) Certification.

187 (A) The filer must certify that a filing has been properly

188 completed AND is in compliance with Utah laws and rules.

189 (B) The following statement must be included in the filing

190 description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED

191 FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE

192 R592- AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

193 (C) A filing will be rejected if the certification is false,

194 missing, or incomplete.

195 (D) A certification that is false may subject the licensee to

196 administrative action.

197 (ii) Indicate if the filing is:

198 (A) new;

199 (B) replacing or modifying a previous submission, with changes

200 described;

201 (C) previously rejected, with reasons for rejection, and

202 previous filing's submission date; or

203 (D) previously objected to or prohibited, with reasons for

204 resubmission.

205 (b) Schedule of Minimum Charges for Escrow Services completed

206 as follows, and attached to the rate/rule schedule tab:

207 (i) All blank fields must be completed;

208 (ii) If a listed service is not performed by a licensee, the

209 field must show "N/A" or "Not Applicable"; and

210 (iii) The Schedule of Minimum Charges for Escrow Services

211 shall not be altered.

212 (c) Letter of Authorization.

213 (i) When the filer is not the licensee, a Letter of Authorization
214 from the licensee must be attached.

215 (ii) The licensee remains responsible for making sure that the
216 filing is in compliance with Utah laws and rules.

217 (d) As required by Section 31A-19a-203(1)(e)(i), the rate
218 filing fee must be received by the department within 5 days of the
219 electronic submission or the filing will be rejected.

222 **R592-XX-7. Charges.**

223 (1) Escrow Service Charges.

224 (a) In accordance with Section 31A-19a-209(3), no charge may
225 be filed or used that would cause the agency or producer to operate
226 at less than the cost of doing the business of escrow.

227 (b) Only minimum escrow charges shown in the Schedule of Minimum
228 Charges for Escrow Services must be filed.

229 (2) Other Settlement Services Charges:

230 (a) other settlement services charges will be used for services
231 not specifically shown in the Schedule of Minimum Charges for Escrow
232 Services.

233 (b) other settlement service charge must be filed as a per hour
234 charge.

235 (3) Document Preparation Charge. Only document charges shown
236 in the Schedule of Minimum Charges for Escrow Services must be filed.

237 (4) Other services which are not specifically listed on the
238 Schedule of Minimum Charges for Escrow services may be rendered
239 provided a justifiable charge is made.

242 **R592-XX-8. Correspondence and Status Checks.**

243 (1) When corresponding with the department, provide the
244 following information to identify the original filing:

245 (a) type of filing;

246 (b) date of filing; and

247 (c) submission method; SERFF or email.

248 (2) A filer can request the status of its filing 60 days after
249 the date of submission.

252 **R592-XX-9. Responses.**

253 (1) A response to a Filing Objection Letter must include:

254 (a) a cover letter identifying the changes made; and

255 (b) revised documents with all changes highlighted.

256 (2) (a) An Order to Prohibit Use becomes final 15 days after
257 the date of the Order.

258 (b) Use of the filing must be discontinued not later than the
259 date specified in the Order.

260 (c) To contest an Order to Prohibit Use, the commissioner must
261 receive a written request for a hearing no later than 15 days after
262 the date of the Order.

263 (d) Once the Order to Prohibit Use has been issued, a new filing
264 is required if the company chooses to make the requested changes
265 addressed in the original Filing Objection Letter. The new filing

266 must reference the previously prohibited filing.

267
268 **R592-XX-10. Penalties.**

269 A person found to be in violation of this rule shall be subject
270 to penalties under Section 31A-2-308.

271
272 **R592-XX-11. Enforcement Date.**

273 The commissioner will begin enforcing this rule 15 days from
274 the effective date of this rule.

275
276 **R592-XX-12. Severability.**

277 If any provision of this rule or its application to any person
278 or situation is held to be invalid, that invalidity shall not affect
279 any other provision or application of this rule which can be given
280 effect without the invalid provision or application, and to this end
281 the provisions of this rule are declared to be severable.

282
283 **KEY: title escrow filings**

284 **Date of Enactment or Last Substantive Amendment: July 19, 2006**

285 **Authorizing, and Implemented or Interpreted Law: 31A-2-404**

286
287

R5902. Insurance, Administration Title and Escrow Commission.

R5902-9914. Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices.

R5902-9914-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to the general authority vested in the commissioner by Section 31A-2-404(2).201(2)(3) to make reasonable rules necessary for, or as an aid to, the effectuation of any provision of the Utah Insurance Code, and pursuant to the specific authority of Section 31A-23a-4024 allowing the commissioner to prescribe a classification of material inducements constituting unlawful trade practices, and to define unfair or deceptive acts or practices prohibited in the business of insurance.

R5902-9914-2. Purpose and Scope.

Title insurance is designed to provide indemnification against loss, including a loss resulting from a determination of unmarketability of the insured's interest in real property. The burden of proving any loss, together with the measure of damages, is the obligation of the insured. Normally, a claim of unmarketability of title or a claim involving a "defect, lien or encumbrance" not excluded from coverage will arise in connection with a proposed sale or loan requiring a review of the insured property as to current marketability. The insured owner, as a potential seller or borrower, may then be placed in the position of being forced or coerced into dealing only with his prior insurer or agent purely as the result of time constraints in meeting the requirements of his transaction, and as the only practical alternative to processing his claim and proving his damage as an insured under his existing coverage. The commissioner is advised and is aware that, in some instances, this circumstance has resulted from the (1) The purpose of this rule is to prohibit intentional delay, neglect or refusal by insurers, through their agents, to record or deliver for recording documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and injurious to the public.

(2) This rule applies to all title insurers and producers.

R5902-9914-3. Definitions.

For the purpose of this rule, the ~~commissioner~~Commission adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

A. "Document" means any instrument in writing relating to real property described in any title insurance policy, contract or commitment, and reasonably required for the support of the insuring provisions.

B. "Record" means to cause to be delivered to the county recorder, or other public official as may be appropriate, any document in the possession or control of any title insurance company or title insurance agent for which a request to record has been made by an insured party.

R5902-9914-4. Definition and Classification of Unfair or Deceptive Practices and Material Inducements.

A. Any knowing conduct by a title insurance company or title insurance agent which results in the failure, neglect, refusal to record, or to obtain for recording, any document which, unless recorded, results in the apparent unmarketability of title or a title which may not be insurable by another insurer, is defined as an unfair or deceptive act or practice as prohibited by Section 31A-23a-402.

B. The issuance or agreement to issue title insurance, or the affirmation of current marketability of title, when the possible recording of documents of title has not occurred, and the record does not manifest a title which would be insurable according to generally accepted title insurance standards, is classified and proscribed as an advantage and material inducement to obtaining title insurance business as prohibited under Section 31A-23a-402(2)(c)(i)(D).

R592-14-5. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R5902-9914-56. Severability.

If any provision or clause of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected by it.

KEY: insurance law

Date of Enactment or Last Substantive Amendment: 1994

Notice of Continuation: January 27, 2007

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23-302

R592. Insurance, Title and Escrow Commission.

R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.

R592-6-4. Unfair Methods of Competition, Acts and Practices.

In addition to the acts prohibited under Section 31A-23a-402, the Commission finds that providing or offering to provide any of the following benefits by parties identified in Section R592-6-2 to any client, either directly or indirectly, except as specifically allowed in Section R592-6-5 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition.

(1) The furnishing of a title insurance commitment without one of the following:

(a) sufficient evidence in the file of the title insurer, agency or producer that a bona fide real estate transaction exists; or

(b) payment in full at the time the title insurance commitment is provided.

(2) The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Section 31A-19a-209(5); or

(b) the filing of charges for escrow services with the Utah Insurance Commissioner (commissioner), which are less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services which are not the subject of rates or escrow charges filed with the commissioner.

(5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.

(6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.

(7) The paying for, furnishing, or waiving all or any part of the rental or lease charge for space which is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate which is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

(9) Furnishing any part of a title insurer's, title agency's, or title producer's facilities, for example, conference rooms or meeting rooms, to a client or its trade association, for anything other than the providing of escrow or title services, or meetings related to such, without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) The co-habitation or sharing of office space with a client of a title insurer, title agency, or title producer.

(11) Furnishing all or any part of the time or productive effort of any employee of the title insurer, agency or producer, for example, secretary, clerk, messenger or escrow officer, to any client.

(12) Paying for all or any part of the salary of a client or an employee of any client.

(13) Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker or as a mortgage lender or mortgage company subject to 31A-2-405 and R592-5.

(14) Paying for the fees or charges of a professional, for example, an appraiser, surveyor, engineer or attorney, whose services are required by any client to structure or complete a particular transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity of a client, except as allowed under Subsection R592-6-5(6). Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R592-6-5(2) or otherwise providing things of value for promotional activities of a client. Title insurers, agencies or producers may attend activities of a client if there is no additional cost to the title insurer, agency or producer other than their own entry fees, registration fees, meals, and provided that these fees are no greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as providing a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

- (a) building plans;
- (b) construction critical path timelines;
- (c) "For Sale by Owner" lists;
- (d) surveys;
- (e) appraisals;
- (f) credit reports;
- (g) mortgage leads for loans;
- (h) rental or apartment lists; or
- (i) printed labels.

(19) Newsletters cannot be property specific or cannot highlight specific customers.

(20) A title insurer, agency or producer cannot provide a client access to any software accounts that are utilized to access real property information that the insurer, agency or producer pays for, develops, or pays to maintain. Closing software is exempt as long

as it is used for a specific closing.

(21)(a) A ~~[person, as defined in 31A-1-301, or individual affiliated with a]~~ title insurer, agency or producer cannot provide ~~[a loan or any type of financing to a client of title insurance.]~~ title or escrow services on real property where an investment loan or financing has been provided by said an individual affiliated with a title insurer, agency or producer, including its owners, or employees, or affiliates.

(b) Section (21) does not apply to such transactions: ~~involving~~
(i) involving purchase money financing; or
(ii) involving primary or secondary residences; or
(iii) involving commercial office property owned and maintained by those persons or entities described in (a) herein; or
(iv) obtained through a trustee's sale; or
(v) re-acquired by the original owner by a stated default.

(22) Paying for any advertising on behalf of a client.

(23) Advertising jointly with a client on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurer, agency or producer may advertise independently that it has provided title insurance for a particular subdivision or condominium project but may not indicate that all future title insurance will be written by that title insurer, agency or producer.

(24) Advertisements may not be placed in a publication, including an internet web page and its links, that is hosted, published, produced for, distributed by or on behalf of a client.

(25) A donation may not be made to a charitable organization created, controlled or managed by a client.

(26) A direct or indirect benefit, provided to a client which is not specified in Section R592-6-5 below, will be investigated by the department for the purpose of determining whether it should be defined by the Commission as an unfair inducement under Section 31A-23a-402(8).

(27) Title insurers, agencies and producers who have ownership in, or control of, other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies, may not use those other business entities to enter into any agreement, arrangement, or understanding or to pursue any course of conduct, designed to avoid the provisions of this rule.

KEY: title insurance

Date of Enactment or Last Substantive Amendment: [June 25, 2009] 2010
Authorizing, and Implemented or Interpreted Law: [31A-2-201, 31A-23a-402] 31A-2-404